



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

DEC 22 2008

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Implementation Guidance for Section 3041 of the Water Resources Development Act of 2007 (WRDA 2007) – Yuba River Basin Project, California

1. Section 3041 of WRDA 2007 modifies the project for flood damage reduction, Yuba River Basin, California, authorized by Section 101(a)(10) of the Water Resources Development Act (WRDA) of 1999 (113 Stat. 275) by 1) increasing the total project cost from \$26,600,000 to \$107,700,000, with an estimated Federal cost of \$70,000,000 and an estimated non-Federal cost of \$37,700,000; and 2) authorizing the Secretary to credit, in accordance with Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the cost of the project the cost of work carried out by the non-Federal interest for the project before the date of the project partnership agreement (PPA) for the project. A copy of Section 3041 is enclosed (Enclosure 1).
2. Section 3041(1) of WRDA 2007 increases the cost of the project authorized by WRDA 1999 from \$26,600,000 to \$107,700,000. The major components of the project consist of 1) work along the Yuba River (miles 0-5) and Feather River (miles 17 – 26) to construct approximately 6.7 miles of new and deeper slurry walls, deepen approximately 9 miles of interior toe drains, and construct or modify berms; and 2) constructing approximately 5 miles of slurry walls and berms along the ring levee protecting the City of Marysville.
3. The Sacramento District is currently preparing a General Reevaluation Report (GRR) to reevaluate the project, specifically the work along the Yuba River and the Feather River, as well as additional features along the Feather River, the Bear River, and the Interceptor Canal and Best Slough for consideration as part of the Federal project. Based upon available information, the GRR is evaluating alternatives that have substantial changes in the project features from those authorized in order to provide the desired level of protection. In addition, a new project purpose (ecosystem restoration) is also under consideration. Initial indications are that the plan recommended in the GRR will likely require additional Congressional authorization beyond the current project authority.
4. As of the date of this guidance, the sponsors have constructed or have under construction improvements to the levee system along the Yuba, Feather, and Bear Rivers, and the Interceptor Canal and Best Slough to provide flood risk reduction prior to execution of a PPA for the project and wish to receive credit for such work toward the non-Federal share of the Marysville Ring Levee. Two authorities could be used to

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afford such credit: Section 3041 of the Water Resources Development Act of 2007, Public Law 110-114 and Section 104 of the Water Resources Development Act of 1986, Public Law 99-662. Because the Marysville Ring Levee is the only element of the Yuba River Basin project that will be constructed by the Government it is the only element toward which such credit could be afforded. Any credit afforded will be in accordance with the procedures contained in paragraphs 5 and 6 of this guidance. Further, this office is granting the following exceptions to policy for the Yuba River Project, specifically applicable to the Marysville separable element.

a. A one time exception to the Section 221 policy that prohibits applying credit from one separable element to another separable element of the same project is granted. This will allow any eligible Section 3041(2) credit for work done by the sponsors on the other Yuba River Basin project elements to be afforded toward the non-Federal share for the Marysville Ring Levee when the GRR is complete, and a new authorization (if required) is obtained.

b. A one time exception to the Section 104 policies that prohibits applying credit from one separable element to another separable element of the same project is granted. This will allow any eligible Section 104 credit for work done by the sponsors on the other Yuba River Basin project elements to be afforded toward the non-Federal share for the Marysville Ring Levee when the GRR is complete, and a new authorization (if required) is obtained.

c. A one time exception to the Section 221 policy that prohibits applying a combination of eligible Section 221 credit and eligible Section 104 credit on the same project is granted. This will allow a combination of the eligible Section 221 credit and eligible Section 104 credit for work done by the sponsors on the other Yuba River Basin project elements to be afforded toward the non-Federal share for the Marysville Ring Levee when the GRR is complete, and a new authorization (if required) is obtained.

5. Section 3041(2) directs the Secretary to afford credit, in accordance with Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the project for work (construction and design required for such construction) carried out by the non-Federal interest for the project before the date of the PPA.

a. Section 3041(2) limits the timing of in-kind contributions prior to the PPA; therefore, credit will not be afforded for design or construction work performed by the sponsors after the date of execution of the PPA. Work that is identified as subsections 1, 2, 3, and 5 of the Yuba River Basin project (see map and descriptions, Enclosure 2) performed by the sponsors prior to the effective date of a PPA should be evaluated pursuant to the guidance and procedures contained in Engineering Circular (EC) No. 1165-2-208, In-Kind Contribution Provisions of Section 221, dated 6 June 2008, to determine the eligibility of credit for such in-kind contributions (construction and design

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required for such construction). Further, only in-kind contributions determined to be integral to the project will be considered eligible for credit. The GRR currently being prepared should include the information necessary to support the required integral determination. See paragraph 6 of EC 1165-2-208 for details.

b. While the current estimated value of the in-kind contributions performed by the sponsors identified as subsections 1, 2, 3, and 5 greatly exceeds the estimate of the non-Federal additional cash requirement for the Marysville Ring Levee, credit for such in-kind contributions cannot be determined or afforded until the GRR is completed and a plan is recommended that includes some or all of such in-kind contributions. Further, if the project recommended in the GRR requires additional Congressional authorization, credit cannot be afforded until after such authorization is provided.

c. Section 3041 credit will only be afforded toward the additional cash requirement for the Marysville Ring Levee. The actual value of the eligible work and amount of credit afforded will be determined in accordance with the terms and conditions of the PPA for the Marysville Ring Levee. In no event will the sponsors be reimbursed for the value of in-kind contributions that exceeds the amount of credit that can be afforded.

d. If the PPA for the Marysville Ring Levee is ready to proceed prior to completion of the activities described in paragraph 5.b. of this guidance, the PPA should proceed without language regarding affording credit for in-kind contributions. However, once the necessary activities are completed, the PPA will be amended to include language regarding affording credit for the eligible in-kind contributions.

e. The work performed by the sponsor identified as subsection 6 (setback levee) is not eligible for credit pursuant to Section 3041(2) because Section 221 requires that any work carried out after the date of enactment of WRDA 2007 requires an In-Kind MOU to be executed prior to initiation of such work. The construction of the setback levee was initiated after the enactment of WRDA 2007 but an In-Kind MOU was not executed prior to initiation of the work. In addition, subsection 4 is not eligible for credit pursuant to Section 3041(2) because the work was completed prior to completion of the original feasibility report and does not meet the milestone required for eligibility of credit established in EC 1165-2-208. Therefore, we cannot afford credit for or reimburse the sponsors for the value of the in-kind contributions performed for subsections 4 or 6 of the project pursuant to Section 3041(2).

6. Section 104 of the Water Resources Development Act of 1986 allows for credit of work performed by non-Federal interests prior to authorization of the project if that work is found to be compatible with the Federal project.

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a. This office has approved subsections 1, 2, 3, 4, and 5 of the Yuba River Basin project performed by the sponsors for potential credit under Section 104. The work on subsection 4 was completed prior to authorization of the Yuba River Project in WRDA 1999 and is creditable but work on subsections 1, 2, 3, and 5 was accomplished after the authorization. Therefore, in order for the work on subsections 1, 2, 3, and 5 to be creditable pursuant to Section 104 the GRR must clearly demonstrate that new congressional authorization is necessary to implement such work. If a new authorization is not required, the work will not be creditable under Section 104. The need for additional authorization for the sole purpose of raising the project cost limit established by Section 902 of WRDA 1986 does not qualify the work as eligible for credit under Section 104. If a new authorization is required and obtained, a determination of how much of the sponsor's work would be creditable pursuant to Section 104 will be made.

b. Section 104 credit will only be afforded toward the additional cash requirement and the sponsor's lands, easements, rights-of-way, relocations and disposal areas requirement of the Marysville Ring Levee. The actual value of the eligible work and amount of credit afforded will be determined in accordance with the terms and conditions of the PPA for the Marysville Ring Levee. In no event will the sponsors be reimbursed for the value of in-kind contributions that exceeds the amount of credit that can be afforded.

c. If the PPA for the Marysville Ring Levee is ready to proceed prior to completion of the activities described in paragraph 6.a. of this guidance, the PPA should proceed without language regarding affording credit for in-kind contributions. However, once the necessary activities are completed, the PPA will be amended to include language regarding affording credit for the eligible in-kind contributions.

d. The work performed by the sponsor identified as subsection 6 (setback levee) is not eligible for credit pursuant to Section 104 because Section 104 requires that this office approve the work for potential credit under Section 104 prior to initiation of construction of such work. This work is not eligible for credit because the construction was initiated prior to approval by this office. Therefore, we cannot afford credit for or reimburse the sponsors for the value of the in-kind contributions performed for subsection 6 of the project pursuant to Section 104.

7. The District may proceed with design of the Marysville Ring Levee under the existing Design Agreement in accordance with the existing budgetary policy and procedural guidance conditioned on the completion of an Engineering Documentation Report, which confirms the project is still economically justified; the project features are substantially in accordance with the project described in the Chief of Engineers report dated November 25, 1998; and the costs for Marysville Ring Levee, when added to the

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costs of the other authorized project features, do not exceed the revised Section 902 limit based on the new authorized cost. Further, no construction work may be undertaken on the Marysville Ring Levee until construction funds are appropriated and a PPA is executed.

A handwritten signature in black ink, reading "John Paul Woodley, Jr." in a cursive script.

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

Enclosures

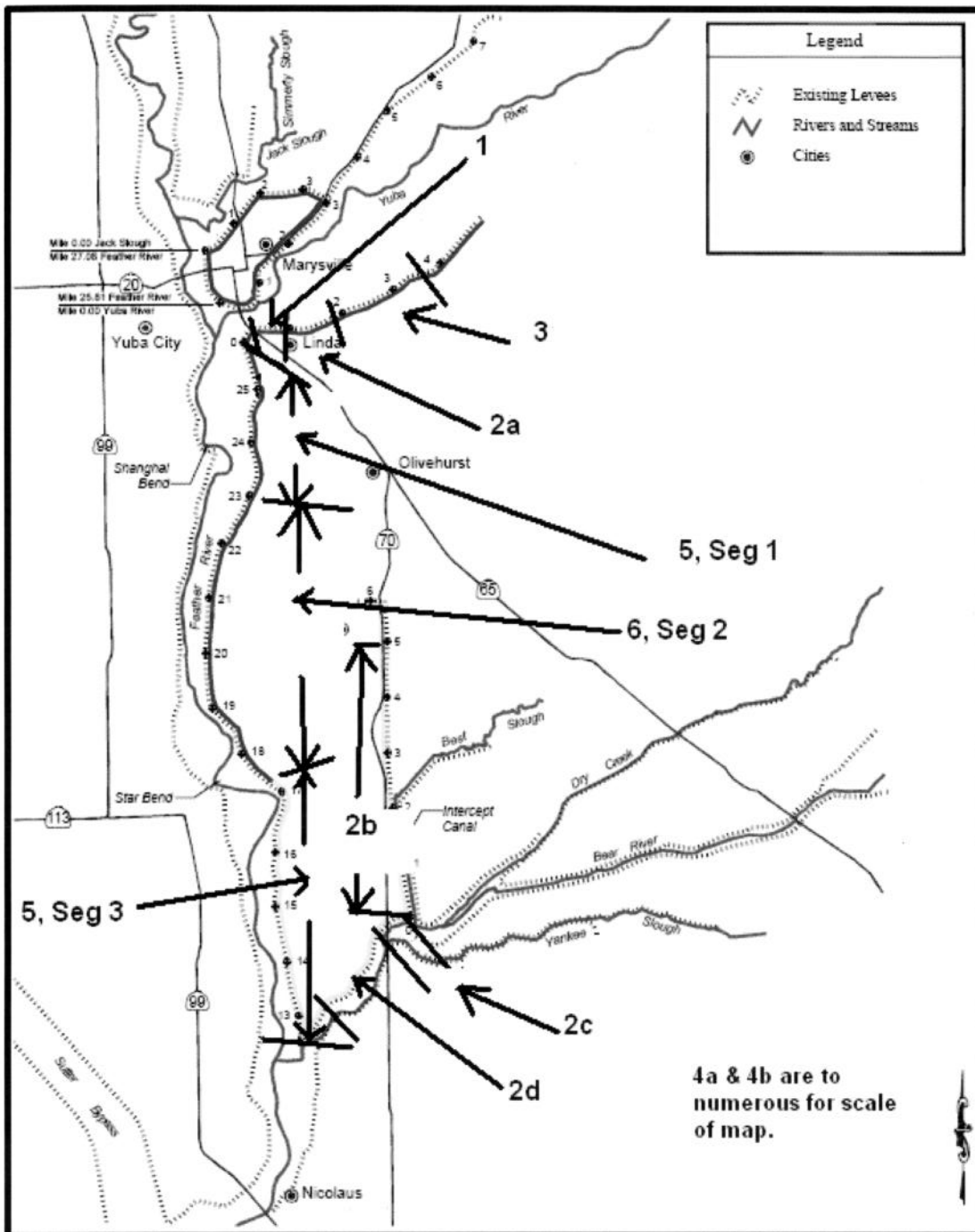
WRDA 2007 LANGUAGE

SEC. 3041. YUBA RIVER BASIN PROJECT, CALIFORNIA.

The project for flood damage reduction, Yuba River Basin, California, authorized by section 101(a)(10) of the Water Resources Development Act of 1999 (113 Stat. 275), is modified—

(1) to authorize the Secretary to construct the project at a total cost of \$107,700,000, with an estimated Federal cost of \$70,000,000 and an estimated non-Federal cost of \$37,700,000; and

(2) to direct the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the project the cost of work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project.



Yuba River Basin – Description of In-Kind Work Areas

SubSection	Description	Authorization, Eligibility for In-Kind Credit
1	Strengthen Yuba River left bank levee from Highway 70 to PLM 0.9 (approximate position of 1986 Levee Break) (3)	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential..
2a	Raise and strengthen Yuba River left bank levee from Highway 70 to UPRR.	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential..
2b	Raise and strengthen the WPIC right levee from the Bear River to Levee Mile 5.9	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential.
2c	Raise and strengthen the Bear River left levee from Highway 70 to the WPIC; about 2,500 long.	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential.
2d	Setback levee on Bear River left side, about 2 miles long. From the Feather River to approximately 1,000 feet west of Highway 70	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential.
3	Raise and strengthen Yuba River left levee from Union Pacific Railroad to Simpson Lane. About 1 mile long.	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential.
4a, 4b	The various sites on Yuba River Left Bank - RD 784; Feather River Left Bank - RD 784; and Bear River Right Bank - RD 784	Not eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential.
5	Strengthen the Feather River left levee from PLM 13.3 to 17.1 (Segment 1);	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential..
5	Strengthen the Feather River left levee from PLM 23.6 to 26.1 (Segment 3); Strengthen the Yuba River left levee from PLM 0.0 to the Western Pacific RR (PLM 0.3)	May be eligible for credit under Section 3041, although also covered by ASA(CW) memo for Section 104 credit potential..
6	Setback levee on Feather River, from PLM 17.1 to 23.6	Not eligible for credit with Section 3041 since no MOU executed prior to initiation of work. Not eligible for section 104 credit since work was initiated prior to seeking ASA(CW) approval.